

**General Information Letter:** Taxation of nonresident transportation worker.

March 16, 1998

Dear:

This is in response to your letter dated February 27, 1998, in which you request a letter ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you have stated the following:

Advice is requested on your Department's position regarding employees of interstate long haul trucking companies for purposes of Illinois income tax and wage withholding tax, under the assumptions set forth below:

Employee of common carrier trucking company is full year resident of Indiana in 1998.

The employee reports to work at his/her employer's base trucking terminal located in Illinois. From the trucking company's base terminal the employee is dispatched using the trucking company's tractor and trailer on interstate routes that usually take the employee thru several states, and may have a duration lasting several days to a week or more. The trucking company employee earns most of his/her wages in states other than Illinois, based on mileage driven and time worked in the other states. Upon completion of the trucking company employee's assigned route, the employee returns the trucking company's equipment (tractor and trailer) to the trucking company's base terminal located in Illinois. The trucking company employee then returns to his/her personal residence located in Indiana to spend off-duty time. The trucking company's employee follows the same pattern of work assignments throughout the year.

Under the above stated circumstances, what part, if any, of the trucking company employee's wages are subject to Illinois individual income tax, and withholding of income tax from his/her wages for the tax year 1998?

A reading of your Department's December, 1997 Informational Bulletin FY 98-18 "Reciprocal Agreement with Indiana Rescinded" doesn't appear to address the issues raised here.

### **Ruling**

Section 302(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 *et seq.*) provides that:

All items of compensation paid in this State (as determined under Section 304(a)(2)(B)) to an individual who is a nonresident at the time of such payment and all items of deduction directly allocable thereto, shall be allocated to this State.

Under this provision, all of the compensation paid to the nonresident employee will be subject to Illinois income tax, or none of it will be. No provision is made for taxing only some of the compensation.

Section 304(a)(2)(B) of the IITA provides that:

(B) Compensation is paid in this State if:

(i) The individual's service is performed entirely within this State;

(ii) The individual's service is performed both within and without this State, but the service performed without this State is incidental to the individual's service performed within this State; or

(iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is within this State, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

The Department has expanded on these principles in 86 Ill. Admin. Code Section 100.3120, a copy of which is enclosed. Under the circumstances described in your letter, it seems likely that all compensation paid to the employee would be "paid in this State" under Section 304(a)(2)(B)(iii), and therefore would be subject to Illinois income tax.

Despite these provisions of Illinois law, it is possible that the compensation paid to the employee in your letter is not subject to Illinois income tax because of 49 U.S.C. § 14503, which provides:

(a) Single State tax withholding. --

(1) In general. -- No part of the compensation paid by a motor carrier providing transportation subject to jurisdiction under subchapter I of chapter 135 or by a motor private carrier to an employee who performs

regularly assigned duties in 2 or more States as such an employee with respect to a motor vehicle shall be subject to the income tax laws of any State or subdivision of that State, other than the State or subdivision thereof of the employee's residence.

If this statute applies to an Indiana resident, that person will not be subject to Illinois income tax.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200. Please note, however, that a PLR cannot apply the law to a hypothetical situation and a PLR is not binding with respect to a statement of facts which is incomplete or incorrect.

Sincerely,

Paul S. Caselton  
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